

REMARKS

Summary of the Examiner's Actions

The examiner objected to Figure 1 because a numeric identifier was not connected to the corresponding element by a leader. Applicant acknowledges the objection to the drawings.

The examiner objected to Claim 1 because of an informality. Applicant acknowledges the objection to the claims.

The examiner rejected Claims 1-12 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. Applicant acknowledges the rejection under 35 U.S.C. § 112, second paragraph.

The examiner rejected Claims 1-25 under 35 U.S.C. § 103(a) as being obvious under Cannaday, U.S. Patent 4,989,546 ("Cannaday"), in view of Kemper, et al., U.S. Patent 5,216,850 ("Kemper"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

Objections to the Drawings

The examiner objected to Figure 1 because the numeric identifier "28" does not have a leader extending to the opening in the flap 26. Applicant has corrected to Figure 1 to include the lead line inadvertently omitted from the original figure. Accordingly, Applicant respectfully submits that the examiner's objection to Figure 1 has been traversed.

Objections to the Claims

The examiner objected to Claim 1 for grammatical informalities. Applicant has amended Claim 1 to include the helping verb inadvertently omitted from the original Claim 1. Accordingly, Applicant respectfully submits that the examiner's objection to Claim 1 has been traversed.

Rejections under 35 U.S.C. § 112, second paragraph

The examiner objected to Claims 1, 10, 11, and 16-20 under 35 U.S.C. § 112, second paragraph as having problems with antecedent basis. Applicant has amended Claims 1, 10, 11, and 16-20 to correct the antecedent basis problems inadvertently introduced in the original claims. The corrections are not intended to affect the scope of the original claims, but serve to eliminate unnecessary confusion in reading the claims.

The examiner also objected to Claim 1 under 35 U.S.C. § 112, second paragraph stating the one of the limitations was unclear. Applicant has reworded Claim 1 to clarify the limitation. The correction to Claim 1 is not intended to affect the scope of the claim, but rather to improve the readability and, hence, the clarity of Claim 1.

In view of these amendments, Applicant respectfully submits that the examiner's rejections under 35 U.S.C. § 112, second paragraph, have been traversed.

Rejections under 35 U.S.C. § 103(a)

The examiner rejected claims 1-25 as being obvious under *Cannaday* in view of *Kemper*. In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." *Id.* The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.*

With regard to Claim 1, the examiner states that it "would have been obvious to . . . to use snaps as taught by *Kemper* to attaché [sic] the flap mechanism as disclosed

by Cannaday in order to provide for quick attachment and detachment of the flap and thereby allowing for ease in assembling and subsequent cleaning of the flap.” Paper No. 20040220, pg. 4.

The examiner has not established a *prima facie* case of obviousness based on the combination of the Cannaday and Kemper references. Specifically, the examiner has failed to establish a suggestion or motivation to combine the Cannaday and Kemper references, the first element of a *prima facie* case of obviousness.

Cannaday discloses a pet refuge that is installed into a window opening to provide limited access to the outdoors for an indoor pet. Cannaday notes that any suitable pet door can be used for the pet refuge. Cannaday, col. 3, lines 66, 67. It appears that the pet door described by Cannaday is further detailed in United States Patent Number 2,758,646 (“Johnson”). *Id.* at col. 3, line 67 to col. 4, line 2. The pet door described by Cannaday includes an inner flap and a U-shaped flap that cooperate to produce an effective weather seal. *Id.* at col. 4, lines 3-21. Cannaday does not address the connection of the U-shaped flap to the pet door. The patent reference by Cannaday discloses that the U-shaped flap is secured to the frame member along its upper edge via nuts and bolts, a substantially permanent connection. See Johnson, col. 2, lines 17-39.

Kemper discloses a portable garage apparatus that has post-mount structure incorporating a series of snap fasteners. Kemper, col. 3, lines 39-46. The post mount structure is designed to be secured to a post. *Id.* at lines 46-51. This allows a plurality of wall panels to be attached between pairs of posts. *Id.* at lines 51-61.

Kemper does not lie within the field of endeavor of the present invention and is, therefore, not analogous art. The examiner states that Kemper is within “the analogous are [sic] of housing structures” and proffers a function “for easily attaching and detaching the flap from the housing.” Section 2141.01(a) of the Manual of Patent Examining Procedure addresses analogous arts. While a snap is a common, everyday mechanical component likely to show up in a multitude of patents, the examiner bears the burden of showing how a “housing structure” renders the claimed invention obvious. See MPEP § 2141.01(a), pg. 2100-119.

Kemper uses snaps to create a semi-permanent garage structure. Snaps offer easy attachment and detachment for creatures with opposable thumbs. However, Kemper obviously desires the portable garage structure to remain intact until intentionally disassembled. The examiner has offered no showing other than the general recitation that the cited prior art relates to "housing structures" to suggest why one concerned with the safety of pets would look to portable garage structures for guidance. Accordingly, Applicant respectfully submits that Kemper is not analogous art and is improperly combined with Cannaday to suggest that the claimed invention is obvious.

Notwithstanding Applicant's belief that Kemper is not analogous to the claimed invention, the examiner has failed to show a proper suggestion or motivation to combine the Kemper and Cannaday references, the first element of a prima facie case of obviousness. Cannaday offers a solution to the problem of allowing a pet to enjoy the outdoor atmosphere while remaining within a confined environment. Although, Cannaday discloses a pet door to permit access between the main structure and the pet refuge, there is no concern for the safety of the pet while passing through the pet door. Kemper addressing the problem of creating a portable garage structure that can be assembled and disassembled with relative ease does not deal with pets in general nor their safety in particular. One skilled in the art would not look at Kemper and Cannaday, individually or in combination, and be motivated to attend to the safety of a pet passing through a pet door. Accordingly, Applicant respectfully submits that Cannaday and Kemper cannot be properly combined to show the claimed invention obvious.

The examiner continues the line of reasoning by stating that "[i]t would have been obvious to . . . to use snaps as taught by Kemper to attaché [sic] the flap mechanism as disclosed by Cannaday in order to provide for quick attachment and detachment of the flap and thereby allowing for ease in assembling and subsequent cleaning of the flap." Paper No. 20040220, pg. 4.

First, such statement is conclusory and not properly based upon common knowledge. Therefore, the examiner's statement cannot be relied upon to reject the claims without an explanation of the supporting rationale. See MPEP § 2144.03, pg.

2100-131 to 133. Accordingly, Applicant requests the examiner to support the finding with adequate evidence.

Second, the examiner's assertion incorrectly assigns a random motivation for the combination of Kemper and Cannaday. Kemper does address the need for easy in assembly of a portable garage structure while Cannaday discloses a fixedly secured door flap with no concern for the attachment or detachment of the door flaps. The examiner throws in the need for "subsequent cleaning" of the flaps. Kemper, Cannaday, nor the present application suggests that cleaning is an objective. Ease of attachment and detachment is inherent in the use of snaps (hence, their use in clothing) but out of Kemper, Cannaday, and the present application, only Kemper is concerned with ease of attachment of the flaps. There is no suggestion nor motivation in either Kemper or Cannaday that the use of snaps would improve the safety of a pet passing through a pet door. Applicant respectfully submits that there is no suggestion or motivation to combine Kemper and Cannaday to produce a safe pet door. Accordingly, the improper combination of Kemper and Cannaday do not render the claimed invention obvious.

Because Kemper and Cannaday are not properly combined, they do not render Claims 1, 13, 15, or 21 obvious. In summary, Kemper and Cannaday are not analogous art in relation to each other or in relation to the claimed invention and, regardless, there is not motivation to combine Kemper and Cannaday to produce a pet door addressing the safety of a pet passing through the pet door. Accordingly, Applicant respectfully requests that the examiner withdraw the rejections under 35 U.S.C. § 103(a).

Claims 2-12 depend, either directly or indirectly, from Claim 1. Claim 14 depends directly from Claim 13. Claims 16-20 depend directly from Claim 15. Claims 22-25 depend directly from Claim 21. As Applicant believes Claims 1, 13, 15, and 21 to be allowable over the cited prior art, Applicant respectfully requests that the examiner withdraw the rejections of Claims 2-12, 14, 16-20, and 22-25 and under 35 U.S.C. § 103(a).

Summary

In view of the amendment of Claims 1, 10, 11, and 16-20, and the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ken Hoffmeister", written over a horizontal line.

J. Kenneth Hoffmeister

Registration Number 43,675

PITTS AND BRITTIAN, P.C.
P.O. Box 51295
Knoxville, Tennessee 37950-1295
(865) 584-0105 Voice
(865) 584-0104 Fax